IN THE COURT OF COMMON PLEAS
HURON COUNTY, OHIO
GENERAL DIVISION

JAMES STAVA,	)	Case No. CVH 2019-0574
	)	
Plaintiff,	)	Judge James W. Conway
	)	
v.	)	
	)	**PLAINTIFF JAMES STAVA'S**
GUARDIAN MANFUACTURING CO. LLC,	)	**SUPPLEMENTAL MOTION FOR**
	)	**SUMMARY JUDGMENT**
Defendant.	)	

Pursuant to Civ.R. 56, Plaintiff James Stava hereby moves this Court for complete summary judgment in his favor with respect to his Second Amended Complaint. Summary judgment in Mr. Stava's favor is appropriate both for the reasons stated in his previously filed summary-judgment briefing as well as for the reasons stated below.

* * *

Plaintiff James Stava loaned Defendant $200,000 in April and July 2017. Pursuant to written promissory notes, half of that amount, plus interest, was to be paid back in full by November 2017 and the other half by February 2018. But Defendant reneged and made *no* payments on the loans. Mr. Stava agreed to an extension until January 28, 2019. But once again Defendant made *no* effort to repay any portion of the loans. Yet again Mr. Stava acquiesced to an extension—this time until January 28, 2020. And yet again no attempt by Defendant to repay a penny. Having sought time and again to work things out with Defendant, Mr. Stava was ultimately left with no choice but to file this suit. But now, incredibly, Defendant seeks to unilaterally force *another* extension by reanimating a long-deceased and defunct clause from the original, subsequently amended promissory notes.

The Court should not tolerate Defendant's continued gamesmanship. Defendant has clearly breached the promissory notes to Mr. Stava's great financial detriment. Mr. Stava now seeks summary judgment in this straightforward case in order to stanch his losses, avoid protracted litigation and further losses in the form of attorneys' fees, and obtain some sort of security for the ultimate collection of the debt owed to him. Accordingly, for all of the reasons stated below, Mr. Stava urges the Court to grant summary judgment in his favor.

I. FACTS AND PROCEDURAL HISTORY

Defendant Guardian Manufacturing Company LLC ("Guardian") is a Willard-based manufacturer of protective gloves. Aff. ¶ 4.[1] In April 2017, Guardian and Mr. Stava reached an agreement by which Mr. Stava, via his self-directed individual retirement account,[2] would provide a short-term, $100,000 loan to Guardian. Accordingly, on April 18, 2017, Guardian's Board Chairman (and later Acting President), Daniel A. Casey ("Casey"), executed, on behalf of Guardian, a promissory note (the "First Note") (1) acknowledging receipt of the promised $100,000 from Mr. Stava and (2) promising, among other things, to repay that principal—plus a $1,000 fee and interest accrued at an annual rate of 8%—"on or before 3[0] November, 2017." Ex. A,[3] April 2017 Note, at 1. The note also provided that "[a]fter the maturity of this Note, or upon any default," the note would bear interest at 18% annually. *Id.*

In July 2017, Guardian and Mr. Stava reached an agreement with respect to a second $100,000 loan from Mr. Stava to Guardian. Casey therefore executed a second promissory note

[1] All "Aff." references are to the Affidavit of James J. Stava, filed concurrently herewith.

[2] Given the self-directed nature of Mr. Stava's individual retirement account, the remainder of this brief will not make the technical distinction between Mr. Stava and his self-directed account.

[3] All "Ex." references are to the lettered exhibits to the Affidavit of James J. Stava, filed concurrently herewith.

on behalf of Guardian on July 6, 2017 (the "Second Note"; together with the First Note, the "Notes"). This note likewise (1) acknowledged receipt of another $100,000 from Mr. Stava and (2) contained a promise to repay this additional $100,000 principal—plus a $1,000 fee and interest accrued at an annual rate of 8%. Ex. B, July 2017 Note, at 1. The pay-by date on the Second Note was "on or before 15 February, 2018." *Id.* Also like the First Note, the Second Note provided that "[a]fter the maturity of this Note, *or upon any default*," the note would bear interest at 18% annually. *Id.* (emphasis added).

Despite a November 2017 deadline on the First Note, by January 2018, Guardian still had not paid a cent. In a gesture of good faith on Mr. Stava's part, on January 29, 2018, Mr. Stava and Guardian (via Casey) executed an amendment to *both* Notes (the "First Amendment"). Ex. C, January 2018 Amendment, at 1. This First Amendment altered the repayment deadlines for the Notes and provided that both Notes "shall now be due and payable *no later than* January 28, 2019." *Id.* (emphasis added). The First Amendment also adjusted the interest rate applicable to the Notes, providing that the outstanding balance as of that date would, going forward, accrue interest at a 7% annual rate. *Id.*

Following another *year* of non-payment, Mr. Stava and Guardian agreed to a second amendment to the Notes (the "Second Amendment"). Executed by Mr. Stava and Guardian's Casey on January 29, 2019, this Second Amendment effects a single change: It provides that "[t]he outstanding balance of both Notes is now due and payable *not later than* January 28, 2020." Ex. D, January 2019 Amendment, at 1 (emphasis added).

Unchanged by either the First or Second Amendments, both Notes contain a provision that makes the "entire Note . . . immediately due and payable, without demand or notice, upon the occurrence of" certain events, including:

a. failure of the Maker to pay any installment hereunder when due, which shall continue for 5 days;

b. any misrepresentation or omission of or on behalf of Maker made to the holder in connection with this loan; [or]

c. insolvency or failure of Maker or any guarantor to generally pay its debts as they become due[.]

Ex. A, April 2017 Note, at 1; Ex. B, July 2017 Note, at 1. Pursuant to these provisions, on June 30, 2019, Mr. Stava sent a letter to Casey identifying several misrepresentations made in connection with the two loans and also pointing out that Guardian was failing to generally pay its debts as they came due. Ex. E, June 2019 Letter to Casey, at 1. Accordingly, as the letter made clear, the entire outstanding amounts on both Notes were immediately due and owing. *Id.*

Despite this—and despite the fact that, by this time, a full *nineteen* months had passed since the First Note had originally come due in November 2017—Guardian still made no attempt to pay a single penny toward the outstanding debt. Having repeatedly acquiesced to lengthy extensions—and even a reduced interest rate—in an effort to accommodate the company, and having sent the June 2019 letter only to receive a reply from Casey that Guardian was unable to pay, Ex. F, Casey July 2019 Email, at 1, Mr. Stava was left with no other reasonable alternative and thus initiated this lawsuit. The case commenced with the filing of Mr. Stava's original complaint on July 18, 2019. Original Compl. at 1. A First Amended Complaint was filed on September 19, 2019. First Amend. Compl. at 1. Both parties then moved for summary judgment, and summary judgment was fully briefed on December 16, 2019—the date Guardian filed its reply in support of its cross-motion for summary judgment. Reply ISO Cross MSJ at 1.

The parties awaited decision on the motions. Meanwhile, pursuant to the Second Amendment to the Notes, the entire amount owing on both Notes came due on January 28, 2020. Ex. D, January 2019 Amendment, at 1 ("The outstanding balance of both Notes is now due and

payable no later than January 28, 2020."). Mr. Stava's operative complaint and summary judgment motion at the time rested on the theory that, as stated in his June 30, 2019 letter to Casey, triggering events had occurred, accelerating the due dates on the Notes. While his position was and is correct, a summary judgment ruling on that basis would require a somewhat-intensive inquiry on the part of the Court, as it would require the Court to conclude that a triggering event had in fact occurred. But the January 28, 2020 lapse of the final, fixed deadline for payment of the Notes—an event that did not occur until after the First Amended Complaint and first round of summary judgement briefs were filed—drastically simplified the case. Thus, on February 11, 2020, this Court entered an order granting Mr. Stava leave to file a Second Amended Complaint adding expiration of the January 28, 2020 final deadline as an additional, more easily adjudicated grounds for granting summary judgment in his favor. Feb. 11, 2020 Order at 1. That order also set a briefing schedule for a new round of dispositive motions, *id.*, which schedule was subsequently modified on April 13, 2020, giving Mr. Stava until April 17, 2020, to file this supplemental motion for summary judgment.[4] Apr. 13, 2020 Briefing Schedule at 1.

II. STANDARD OF REVIEW

"Summary judgment shall be rendered forthwith if" the record before the Court "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Civ.R. 56(C). While the party seeking summary judgment "bears the initial burden of informing the trial court of the basis for the motion, and identifying those

[4] Accordingly, this supplemental motion focuses solely on the expiration of the January 28, 2020 final deadline for full payment of the Notes. That issue is dispositive and should result in a complete judgment in Mr. Stava's favor for the reasons stated herein. But Mr. Stava by no means waives his arguments regarding acceleration. Rather, he relies on his previously filed briefs on that issue for the time being and requests—and hereby moves—that, if this Court were for some reason to deny this present supplemental motion, his new counsel be permitted to file renewed briefing on the acceleration issue.

portions of the record that demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party's claims," once this initial burden is satisfied, "the nonmoving party then has a reciprocal burden outlined in Civ.R. 56(E) to set forth *specific facts* showing that there is a genuine issue for trial." *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107, 662 N.E.2d 264 (emphasis added). "If the nonmovant does not so respond, summary judgment, if appropriate, *shall* be entered against the nonmoving party." *Id.* (emphasis added). In responding to a motion for summary judgment, the opposing party "'may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.'" *Id.* (quoting Civ.R. 56(E)).

Further, "'[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.'" *Turner v. Turner*, 67 Ohio St.3d 337, 340, 1993-Ohio-176, 617 N.E.2d 1123 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)). "[A]n 'alleged factual dispute between the parties' as to some ancillary matter 'will not defeat an otherwise properly supported motion for summary judgment.'" *Chilcutt v. Ford Motor Co.*, 662 F.Supp.2d 967, 971 (S.D.Ohio 2009) (quoting *Anderson* at 247).[5] And the dispute must be genuine: The non-movant must present "significant probative evidence" demonstrating that "there is [more than] some metaphysical doubt as to the material facts" to survive summary judgment and proceed to trial on the merits. *Moore*

[5] In interpreting the Ohio Rules of Civil Procedure, the Ohio Supreme Court has consistently advised that federal case law interpreting a corresponding federal rule is "instructive" where, as here, the federal rule and the Ohio Rule of Civil Procedure at issue are similar. *First Bank of Marietta v. Mascrete, Inc.*, 79 Ohio St.3d 503, 508, 1997-Ohio-158, 684 N.E.2d 38). Indeed, the Ohio Supreme Court has consistently applied federal case law in interpreting Ohio's summary-judgment standard. *E.g.*, *Dresher*, 75 Ohio St.3d at 293 (relying on United States Supreme Court precedent in interpreting Civ.R. 56(C)).

v. Philip Morris Cos., 8 F.3d 335, 340 (6th Cir.1993). "It is well settled that . . . speculation is insufficient to create a genuine issue of material fact for summary judgment purposes." *Four-O Corp. v. Mike's Trucking, Ltd.*, 12th Dist. Madison Nos. CA2007-01-002, CA2007-01-003, 2007-Ohio-5628, ¶ 33 (citing *Mahmoud v. Dennis*, 6th Dist. Lucas No. L-04-1183, 2005-Ohio-3610, ¶ 8).

III. ARGUMENT

This case is an easy one. Time and again Guardian has disregarded the terms of the at-issue Notes and failed to make required payments. For the initial years of Guardian's shenanigans, Mr. Stava assumed Casey and the company acted in good faith and gave them the benefit of the doubt, twice acquiescing to extensions of the Notes and even agreeing to a lowered interest rate. But Guardian and Casey only continued to take advantage of Mr. Stava, still failing to make *any* payments toward the outstanding debts. Now the last of these extended deadlines has at last passed: Mr. Stava was entitled, on January 28, 2020, to full payment on both Notes. Guardian failed to pay, and thus Mr. Stava is entitled to summary judgment in his favor.

A. Guardian Has Breached Its Obligations Under Both Notes.

"A promissory note is a contract" and thus, an action, such as this one, for breach of a promissory note is an action for breach of a contract. *Cranberry Fin., LLC v. S&V Partnership*, 186 Ohio App.3d 275, 2010-Ohio-464, 927 N.E.2d 623, ¶ 9 (6th Dist.). *See also Brady v. Park,* 2013 UT App 97, 302 P.3d 1220, ¶ 10 ("[a] promissory note is a contract" (internal quotation mark omitted)).[6] The elements of a breach of contract claim are: "[1] existence of a contract, [2] performance by the plaintiff, [3] breach by the defendant, and [4] damage or loss to the plaintiff."

[6] The Notes provide that they are "governed by the laws of Utah." Ex. A, April 2017 Note, at 2; Ex. B, July 2017 Note, at 2. Thus, citations to substantive Utah law are included here.

Marshall & Melhorn, LLC v. Sullinger, 6th Dist. Lucas No. L-18-1218, 2020-Ohio-1240, ¶ 32. *See also Am. W. Bank Members, L.C. v. State*, 2014 UT 49, 342 P.3d 224, ¶ 15 (same). Here, there is no dispute that the contract exists. *See* Exs. A through D; Aff. ¶¶ 5-6. And there is likewise no dispute that Mr. Stava performed under the promissory notes by providing $100,000.00 per note to Guardian. *See* Aff. ¶¶ 5-6. Indeed, the text of the promissory notes itself explicitly acknowledges receipt of those funds by Guardian. Ex. A, April 2017 Note, at 1 (note made "for value received"); Ex. B, July 2017 Note, at 1 (same). Likewise, there can be no genuine dispute that, if the Notes have been breached and left unpaid, Mr. Stava has been damaged, at minimum, to the extent of the non-payment.[7]

Thus, to be entitled to summary judgment in his favor, Mr. Stava is left with the remaining burden of proving but a single element: Breach by Guardian of the terms of the Notes. The plain language of the Notes and Amendments and the undisputed evidence before the Court show that this element, too, is readily satisfied here.

It is undisputed that the Second Amendment applies to both Notes. That document, executed by both Mr. Stava and Casey, plainly states that "[t]he outstanding balance of both Notes is now due and payable *no later than* January 28, 2020." Ex. D, January 2019 Amendment, at 1 (emphasis added). It is undisputed that Guardian failed to pay the balance on the Notes by that date—indeed, the company has *still* failed to pay. *E.g.*, Aff. ¶ 15. In so doing Guardian has breached the terms of the Notes as amended by the Second Amendment.

Accordingly, all four elements of a breach-of-promissory-note action are satisfied here, and summary judgment must be granted in Mr. Stava's favor.

[7] Damages are discussed in more detail below. *Infra* at 12-14.

B. Casey's Purported Attempt to "Extend" the Term of the Notes Past January 28, 2020 Is Invalid and Does Not Change the Above Analysis.

Notwithstanding the foregoing, Guardian will likely argue in opposition to this motion that it did not breach the Notes by failing to pay them in full by January 28, 2020, because the company acted to extend the deadline by six months—to July 28, 2020—pursuant to procedures contemplated in the original notes. In support of this argument, Guardian will point to language in both original Notes stating, "This loan is extendable, at Guardian's option, six months for an additional 1 (one) point fee, payable at that time." Ex. A, April 2017 Note, at 1; Ex. B, July 2017 Note, at 1. But there are multiple reasons why this argument in meritless and why that language does not apply to any purported January 2020 extension by Guardian.

First, the argument ignores the fact that both Notes have been *amended*. The First Note originally stated that "[p]rincipal, fees, and interest" were payable "on or before 31 November, 2017" but that Guardian could "extend[] . . . six months for an additional 1 (one) point fee." Ex. A, April 2017 Note, at 1. The Second Note likewise said that "[p]rincipal, fees, and interest" were payable "on or before 15 February, 2018" but that Guardian could "extend[] . . . six months for an additional 1 (one) point fee." Ex. B, July 2017 Note, at 1. But the Second Amendment, while it maintains all other components of the original Notes, scraps this soft-deadline-with-extension-option structure from the original Notes and in its place sets an extended, but hard-and-fast, deadline: The Second Amendment unequivocally states that "[t]he outstanding balance of both Notes is now due and payable *no later than* January 28, 2020." Ex. D, January 2019 Amendment, at 1 (emphasis added). Permitting Guardian to extend the due date beyond January 28, 2020, would render the phrase "no later than" mere surplusage, in violation of basic principles of contract interpretation.

Second, even Guardian, at a less adversarial juncture, demonstrated its agreement with this interpretation, *i.e.*, that the new timing provisions, including the "no later than" language, in the First and Second Amendments, did not include an option for unilateral extension by Guardian upon payment of a 1% fee. In January 2018, Mr. Stava and Casey, on behalf of Guardian, executed the First Amendment, which scrapped the old soft-deadline-with-extension-option arrangement under the original Notes and put in place an extended, but absolute, deadline of "no later than January 28, 2019." Ex. C, January 2018 Amendment, at 1. Fast forward a year, to January 2019. Guardian still had not paid the Notes and was in danger of default. But rather than exercise its supposed option to extend the Notes for another six months, Guardian negotiated an *additional* amendment to the Notes to set a new, absolute deadline of January 28, 2020. Ex. D, January 2019 Amendment, at 1. Surely if the six-month-extension option had been available in January 2019, Guardian would have taken that rather than go to the trouble of renegotiation. But the company realized the obvious—that the First Amendment, like the Second, abrogated the original extension structure and put in place a later, fixed deadline instead.

Third, even if the Court were, contrary to the plain language of the operative Second Amendment, conclude that the extension provision from the original notes somehow survived enactment of that Second (or First) Amendment, still the extension language does not operate to extend the deadline on the Notes past January 28, 2020. That is because the extension language is inextricably linked with the original due date of each Note. Thus, the Second Note, as previously discussed, provides for a "one-time payment on or before 15 February, 2018. This loan [*i.e.*, this loan due date] is extendable, at Guardian's option, six months for an additional . . . fee." Ex. B, July 2017 Note, at 1. In other words, the original provision only allows for a six-month extension

from the original due date of 15 February, 2018. Thus, it at most provides for an extension to August 15, 2018—a date that is long past.[8]

Fourth and finally, even if the Court were to disregard all of the above and (mistakenly) resurrect the six-month extension option from the original Notes and conclude it was available as a mechanism to extend the later-negotiated, absolute January 28, 2020 deadline, still Mr. Stava should prevail because Guardian has failed even to adhere to the terms of that original (defunct) extension mechanism. Specifically, the original Notes provided that the Notes could be extended "at Guardian's option, [for] six months for an additional 1 (one) point fee, payable at that time [*i.e.*, on the day the Note comes due]." Ex. A, April 2017 Note, at 1; Ex. B, July 2017 Note, at 1. But as set forth in Mr. Stava's affidavit, he (that is, his self-directed IRA) did not receive any payment purporting to be the one-point fee required for extension until January 30, 2020—two days *after* the deadline. Aff. ¶ 14. Additionally, as of January 28, 2020, the First and Second Notes had values of $125,030.78 and $127,725.25, respectively. *Id.* ¶¶ 16(c), 17(c). Thus, the one-point (*i.e.*, one-percent) fee necessary to take advantage of the extension (had it, counterfactually, been available) would have amounted to $1,250.30 for the First Note and $1,277.25 for the Second. Yet Guardian[9] tendered two checks of only $1,000.00 each. Accordingly, even if the extension mechanism had still been in place in January 2020, Guardian both missed the deadline to take advantage of it *and* failed to tender sufficient payment.

[8] The same analysis, only with different dates, of course applies to the First Note as well.

[9] Actually, the payments were not tendered from Guardian's funds but instead originated from Casey via cashier's check obtained in Florida—yet another way in which *Guardian* did not comply with the extension mechanism.

For all of these reasons, then, no extension past the already-repeatedly-extended January 28, 2020 deadline for payment was obtained by—indeed, no such extension was available to—Guardian. Guardian failed to tender full payment by that date, and thus it has breached the Notes.

C. Mr. Stava Is Entitled, at Minimum, to a Judgment for Damages of $273,790.82, Plus Additional Attorneys' Fees Incurred and Pre- and Post-Judgment Interest.

The existence of the contract, Mr. Stava's performance under the contract, and Guardian's breach having been established, the only outstanding issue remains the measure of Mr. Stava's damages. The Notes themselves acknowledge the requirement that Guardian timely pay all "[p]rincipal, fees, and interest" to Mr. Stava and likewise provide for penalty interest "at the rate of 18 percent per annum" "[a]fter the maturity of th[e] Note, or upon ay default." Ex. A, April 2017 Note, at 1; Ex. B, July 2017 Note, at 1. Likewise, the Notes provide that Guardian will "pay . . . all costs, expenses and reasonable attorney's fees incurred in the collection of sums due hereunder, whether through legal proceedings or otherwise, to the extent permitted by law." *Id.*

As explained in detail in Mr. Stava's attached affidavit, both Notes variously accrued interest at rates of 7%, 8%, and 18% annually (all compounded daily) depending on the circumstances prevailing at any given point in time. Aff. ¶¶ 16-17. Interest accrued on the First Note at 8% from the date it went into effect until it first came due on November 30, 2017, at 18% from the day of that default until the First Amendment was agreed to, at 7% percent from that date until the January 28, 2020 deadline under the Second Agreement expired, and at 18% thereafter, for a total amount outstanding—as of today—of $130,132.08. *Id.* ¶ 16. The Second Note accrued interest from the date it went into effect until the date Guardian defaulted on its obligation to pay the $1,000 loan origination fee. *Id.* ¶ 17(a). Interest then accrued at 18% until the First Amendment was agreed to. *Id.* ¶ 17(b). Thereafter, like the First Note, the Second Note accrued interest at 7% until the January 28, 2020 deadline under the Second Agreement expired, at which

point the rate returned to 18%, for a total—as of today—of $132,936.49. *Id.* ¶17(c)-(d). This yields a total due on the Notes of $263,068.57.[10] *Id.* ¶ 18.

In addition to these damages, Mr. Stava has paid $6,722.25 in attorney's fees to Attorney Kevin Zeiher (former counsel in this case) in an effort to collect on these debts. *Id.* ¶ 19. And he has thus far incurred approximately $4,000.00 in attorneys' fees owed to Attorney Emmett Robinson for his role in this litigation. *Id.* ¶ 20. This yields a total judgment amount of $273,270.82. *Id.* ¶ 21. Mr. Stava is also entitled to interest—at an 18% annual rate[11]—accrued between today, April 17, 2020, and the date the Court renders judgment in this matter. *E.g.*, *N.R.C., Inc. v. Satis Am. Corp.*, 8th Dist. Cuyahoga No. 49782, 1986 Ohio App. LEXIS 5204, at *20-21 (Jan. 23, 1986) ("Ohio courts have consistently held that a creditor is entitled to prejudgment interest if the amount claimed is liquidated and certain, capable of ascertainment by mere computation, or subject to reasonable calculation by reference to existing market values.") *See also* R.C. 1343.03(A) (interest to be paid "at the rate provided in th[e] [at-issue] contract"); *Lefavi v. Bertoch*, 2000 UT App 5, 994 P.2d 817, ¶ 24. Should the Court rule in his favor, Mr. Stava will likewise, of course, be entitled to post-judgment interest at that same rate as well. R.C. 1343.02 ("Upon all judgments . . . rendered on any . . . note . . . containing stipulations for the payment of

[10] This method of calculation is an overly *conservative* one. Mr. Stava contends that, for the reasons stated in his June 30, 2019 letter to Casey, Guardian was in breach of the Notes by that date and thus that, as to both Notes, 18% penalty interest began accruing on that date *at the latest*. *See* Ex. E, June 2019 Letter to Casey, at 1; Ex. A, April 2017 Note, at 1 (requiring 18% interest upon any event of default); Ex. B, July 2017 Note, at 1 (same). But in light of the costs of continued litigation and the need to obtain a judgment posthaste in order to protect his rights, mitigate his damages, and obtain security with respect to the outstanding debt, Mr. Stava requests judgment based on this more conservative calculation in order to avoid even a hint of disputed material fact.

[11] That is, the penalty rate provided for in the Notes. Ex. A, April 2017 Note, at 1; Ex. B, July 2017 Note, at 1.

interest in accordance with section 1343.01 of the Revised Code,[12] interest shall be computed until payment is made at the rate specified in such instrument."); Utah Code § 15-1-4(2)(a) ("a judgment rendered on a lawful contract shall conform to the contract and shall bear the interest agreed upon by the parties, which shall be specified in the judgment").[13]

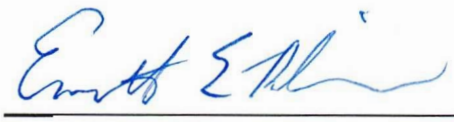
IV. CONCLUSION

For all of these reasons, Mr. Stava respectfully moves this Court for an expeditious order granting summary judgment in his favor and awarding damages totaling $273,790.82, plus any additional attorneys' fees accrued in this action, plus pre- and post-judgment interest at a rate of 18%.

[12] R.C. 1343.01 permits the 18% interest rate applicable here. *E.g.*, R.C. 1343.01(B)(5).

[13] A ruling in favor of Mr. Stava on his breach-of-promissory-note claim is, for the reasons discussed above, the correct and best outcome in this case. And the wrong committed by Guardian against Mr. Stava clearly sounds in breach of contract (*i.e.*, breach of promissory note). But if for some reason the Court were to disagree, still Mr. Stava should prevail on his alternative unjust enrichment claim. "The elements for unjust enrichment are: (1) a benefit conferred by a plaintiff upon a defendant; (2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment (i.e., the 'unjust enrichment' element)." *Advantage Renovations, Inc. v. Maui Sands Resort, Co., LLC*, 6th Dist. Erie No. E-11-040, 2012-Ohio-1866, ¶ 33 (internal quotation marks omitted). *See also Desert Miriah, Inc. v. B&L Auto, Inc.*, 2000 UT 83, 12 P.3d 580, ¶ 13 (same). There can be no question here but that all three elements are met. Mr. Stava conferred a direct benefit upon Guardian in the form of two transfers of $100,000.00 each. Aff. ¶¶ 5-6. In addition, Guardian obtained the benefit of the time value of that money, expressed in the form of the interest rates agreed to by the parties. *E.g.*, Ex. A, April 2017 Note, at 1; Ex. B, July 2017 Note, at 1; Ex. C, January 2018 Amendment, at 1; Ex. D, January 2019 Amendment, at 1. Guardian certainly has knowledge of the benefit. *E.g.*, Ex. A, April 2017 Note, at 1 (acknowledging receipt of funds); Ex. B, July 2017 Note, at 1 (same). And given the agreement to repay and the fact that the funds were otherwise unearned, it would certainly be unjust for Guardian to retain the funds. Thus, Mr. Stava is entitled to judgment of $263,068.57 on his unjust enrichment claim. Aff. ¶ 18.

Respectfully submitted,



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NOTICE OF NON-ORAL HEARING

A non-oral hearing date is set for this motion on May 21, 2020 at 1 P.M. *See* Apr. 13, 2020 Order at 1.

Emmett E. Robinson

Attorney for Plaintiff James Stava

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2020, Plaintiff James Stava's Supplemental Motion for Summary Judgment, along with the affidavit and exhibits in support of the same, was sent to counsel for Guardian Manufacturing Company LLC via U.S. mail and e-mail at the following addresses:

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